IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Twentieth day June

Two thousand and Seven

PRESENT

THE HONOURABLE MR.JUSTICE DHARMARAO ELIPE
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

W.P.Nos.38990 of 2002,
2832 to 2835 of 2003, 9996 of 2003, 10059 of 2003, 30188, 30345 & 34623 of 2003,
2567, 2711 , 2750, 2762, 3003, 3004, 3766, 3767 3810, 4163, 4164, 4172, 4940 of 2004, 4986 of 2004, 5132 of 2004, 6369 of 2004, 6424 of 2004, 11367 of 2004, 21433 of 2004,
22944 of 2004, & 19967 of 2005,
AND
W.P.M.P.Nos.58153 of 2002,
3542 to 3545 of 2003, 12665 of 2003, 12760 of 2003, 36870 of 2003, 37066 of 2003, 42057 of 2003,
2934 of 2004, 3142 of 2004, 3222 of 2004, 3239 of 2004, 3537 of 2004, 3539 of 2004, 4428 of 2004, 4430 of 2004, 4481 of 2004, 4901 of 2004, 4903 of 2004, 4912 of 2004, 5771 of 2004, 5819 of 2004, 7525 of 2004, 7608 of 2004, 13392 of 2004, 25916 of 2004, 27754 of 2004,
21748 of 2005, AND W.V.M.P.No.2067 of 2006

1.Union of India,
rep by the Chief Postmaster General,
Tamil Nadu Circle, Chennai-2

2.Senior Superintendent of Post Offices,
Chennai City South Division,
Chennai. ...Petitioner in WP.No. 38990/02

...Petitioner and Nil in WP.Nos.2834/03, 2835/03

...1st Petitioner and Nil in WP.4986/04, 19967/05

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1. Union Of India,
rep by the Director General (Post)
Dah Bhavan,
Samsed Marg, New Delhi 1.

2. The Secretary to Government,
Department of Personnal and Training
M/o Personnel Public and Pensions,
New Delhi 110 001

3. The Chief Post Master General,
Tamilnadu Circle,
Chennai 2.

4. The Chief Post Master,
Chennai GPO
chennai ...Petitioner in WP.No.2832/03

...Petitioner 1, 2 & 3 and nil in WP.No.2833/03
Nil, Nil 2nd petitioner and Nil in WP.Nos.2834, 2835/03, 3810/04, 4163/04, 4164/04, 4940/04 5132/03 2nd petitioner IN WP.34623/03

...1st petitioner nil 3rd petitioner and nil in WP.10059/03, 34623/03 1st petitioner in WP.3810/04 WP.No.4163/04

ISt Petitioner nil, 2nd Petitioner nil in W.P.3810/04, 4163/04, 4164/04, 4940/04, 5132/04, 6369/04

The Senior Superintendent of Post Offices,
Pondicherry Division
Pondicherry.

The Superintendent Of Posts Offices,
Chengalpattu Division,
Chengalpattu. ...Petitioner 4 & 5 in WP.No.2833/03

1. The Union of India rep by Ministry of Communication
Department of Posts,
Dak Bhavan New Delhi. ...1st petitioner in WP.9996/03, and 10059/06

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2. The Director General of Posts,
Ministry of Communication,
Department of Post,
New Delhi 1. ...2nd petitioner in
WP.No.9996/03 10059/03

3. The Chief Post Master General,
Tamil Nadu Circle,
Chennai ...3rd petitioner in
WP.No.10059/03

Union of India,
rep by Superintendent of Post Officer,
Salem West Division,
Salem, Salem District, ...Petitioner in WP.No.30188/03
30345/03

... 3rd Petitioner in W.P.5132/04

The Senior Superintendent RMS
Chennai Sorting Division,
Chennai 8. ...3rd Petitioner in WP.34623/03

The Union of India
represented by the Chief Post Master
General Tamil Nadu Circle
Chennai 600 002

2. The Senior Superintendent
of Post Offices
Nilgiris Division
Udhagamandalam 643 001 ..Petitioners in WP Nos. 2567/04,
2711/04, 2750/04, 2762/04, 3003/04,
3004/04, 3767/04
.. 1st Petitioner in WP NO. 3766/04

The Senior Superintendent
of Post Offices
Tuticorin Division
Tuticorin 628 008 .. 2nd Petitioner in WP NO. 3766/04 and
4986/04
..3rd Petitioner in WP NO. 4164/04

The Senior Superintendent of
RMS
RMS 'MA' Division
Madurai 625 001 .. 3rd Petitioner in WP NO. 3810/04 and
4163/04 4940/04

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1. The Union of India
represented by Ministry of
Communications
Department of Posts
Dah Bhavan Samsad Marg
New Delhi 110 001

2.The Director General of Posts
Department of posts
Dah Bhavan; Samsad Marg
New Delhi 110 001

3. The Chief Post Master General
Tamil Nadu circle
Chennai 600 002

The Principal Chief Post Master
General
Tamil Nadu Circle
Chennai 600 002 ..Petitioner in W.P.4172/04, 6424/04
.. 1st petitioner nil 2nd Petitioner in
WP NO. 21433/04

The Senior Superintendent of
Post offices
Virudhunagar Division
Virudhunagar 626 001 .. 3rd Petitioner in WP NO. 6369/04

The Union of India
represented by the
Senior Superintendent of
Post Offices
Vellore Division, Vellore
Vellore District .. Petitioner in WP NO. 11367/04

The Senior Superintendent of
Post Offices
Tambaram Division
Tambaram,
Chennai .. 3rd Petitioner in WP NO. 21433/04

Union of India represented
by the Superintendent of Post
Offices, Tiruvannamalai Division,
Tiruvannamalai .. Petitioner in WP NO 22944/04

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The Senior Superintendent of
post offices,
Madras city North Division
Department of Post
Commander-in Chief Road,
Egmore Chennai 600 008 .. 2nd Petitioner in WP NO. 19967/05

vs

The Central Administrative
Tribunal
City Civil Court Buildings
Chennai 600 104 .. 1st respondent in WP Nos. 38990/02, 2832/03, 2833/03, 2834/03, 2835/03, 9996/03, 11367/04, 21433/04, 22944/04, 10059/03

2nd Respondent in WP NOS. 30188/03, 30345/03, 34623/03, 2567/04, 2711/04, 2750/04, 2762/04, 3003/04, 3004/04, 3766/04, 3767/04, 3810/04, 4163/04, 4164/04, 4940/04, 4986/04, 6369/04 and 19967/05

3rd Respondent in WP NO. 5132/04

17th respondent in WP NO. 6424/04

2. M. Nallavan 2nd Respondent in WP NO. 38990/02

2. D. Bendict Don Bosco
3. M. Prabhavathy
4. C.G. Muthumanickam
5. S. Karunakaran
6. S. Ganesh
7. S. Pushpam
8. D. Jothibai
9. V. Imbasekar
10. A. Mukthair Unnisa Begum
11. C. Udayakumar
12. L. Hemalatha
13. R. Josephin Vimala
14. S. Vitta Bai
15. C. Elazabath Mercy Flora
16. B. Deenadayalan
17. M. Md. Musthafa

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18. V.S. Sadagopal
19. S. Vinayagamurthy
20. B. Venkatesan
21. J. Prakash
22. S. Gopinath .. Respondents 2 to 22 in WP NO. 2832/03

2. R. Thiruvenkatesan
3. A. Kalaiselvam
4. R. Vijayakumar
5. S. Senthil Kumar
6. T. Duraisamy
7. D.Geetha
8. K. Murali
9. M. Ravi
10. A.Vanaja
11. P. Ramadoss
12. R.Govindasamy
13. S.Chakravarthi
14. V. Arumaiselvam .. Respondents 2 to 14 in WP NO. 2833/03

2. P. Sakthi Yogaraj .. 2nd Respondent in WP NO,. 2834/03

2. E. Srinivsan .. 2nd Respondent in WP NO. 2835/03

2. J. Raghavendran
3. Z. Abdul Raheem
4. V. Basker
5. V.Sukumar
6. C. Vengadesan
7. S. Karthikeyan
8. J. Vijayakumari
9. R. Vanitha
10. Ratchaganathan
11. V. Mahesh
12. A. Ashok kumar
13. G. Ravichandran
14. V. Shanmugham
15. K.S. Jayaprakash
16. G. Sureshkumar
17. R. Dhandapani
18. P. Rajasekar
19. R. Karunakaran
20. S. Gopalakrishnan
21. S. Ramalingam
22. S. Saravanan
23. B. Ramkumar

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24. S. Manikandan
25. N. Suresh Babu
26. T. Senthil Karthikeyan
27. G. Mathswaran
28. S. Sivasubramanian
29. S. Saravanan
30. P. Geetha
31. P.Senthilkumar
32. R. Sasikala
33. J. Sivakumar
34. L. Vijaya
35. C.V. Kavitha
36. P. Karthikeyan,
37. N. Shobana Gomathy
38. S. Subbulakshmi
39. M. Ayyappan
40. K. Satheesh
41. L. Yasida Rani
42. S. Padmanabhan .... Respondents 2 to 42 in WP.No. 9996/2003.

2.S.Balamurgan
3.R.Krishnakumar
4.J.Balaji
5.B.Nandhini
6.Sasikala Muralidharan
7.R.Patabiraman
8.H.Kamal Clement
9.M.Jayakumari
10.K.Prabhavathy
11.K.Venugopal
12.R.Bhavani
13.K.Balaji
14.R.Janakiraman
15.R.Selvi
16.S.Sumithra
17.R.Indra
18.S.Padmini
19.M.Sathishkumar
20.D.Anand
21.K.N.Sukumar
22.A.Mansoor Ahmed
23.K.Sulthan Mohideen
24.R.Gurubaran
25.M.Sivakumar
26.S.Latha
27.K.Amutha
28.S.Umapathy
29.S.Saravanan

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30.G.Padma
31.G.Lenin Kumar
32.R.Balasubramanian
33.Kanagasundaram
34.J.Bhuvaneswari
35.M.Ganesan
36.N.Lavanya
37.C.Sudhakar
38.R.Ramesh
39.R.Krishnaveni
40.D.R.Lenin
41.V.Krishnaveni
42.V.S.Saravanan
43.D.Baskaran
44.S.Karthikeyan
45.M.Vimala
46.M.Faridha
47.S.Umarani
48.R.Venkateswaran
49.D.Sekar alias Devarajan
50.E.Prakasam
51.S.K.Venkatesan
52.V.Ramesh
53.K.Dhandayuthapani
54.S.Poongudi
55.P.Seshadri
56.S.Prasath
57.G.Karthikeyan
58.K.Ramadoss
59.M.Sadasivam
60.A.Raghunathan
61.G.Balaji
62.S.Gangaikondacholan
63.S.Amudhavalli
64.R.Prakash
65.T.Parthiban
66.M.Indumathyi
67.Vijayalakshimi
68.R.Gopi
69.C.Kanchana
70.D.Muthulakshmi
71.A.Subramanian
72.V.Poomani Chellathai
73.R.Sivakumar
74.C.Navaraj
75.S.Annamalai
76.S.Venkata Balasubramanian
77.Balasubramanian
78.K.Arokiasamy

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79.K.Selvakumar
80.R.T.Vijayalakshmi
81.G.Vani
82.S.Palavesam
83.S.Sivasubramanian
84.N.Neppolian
85.P.Pandiselvi
86.P.Kanesan
87.S.Alarsamy
88.G.Murugesan
89.R.Prema
90.P.Muthuraj
91.A.Rehena Banu
92.H.Vijayan
93.G.Nisar Ahmed
94.R.Dinakaran
95.K.Senthilrajan
96.R.Manikandan
97.E.Jagadeesan
98.K.Sridevi ..Respondents 2 to 98 in WP 10059/03

P. Saravanan .... Ist Respondent in WP 30188/2003

K. Sakthivel .... Ist Respondent in WP 30345/2003

T. Vasantha Seelan .... Ist Respondent in WP 34623/2003

R. Rajkumar .... Ist Respondent in WP 2567/2004

R. Sivakumar .... Ist Respondent in WP 2711/2004

M. Nandakumar .... Ist Respondent in WP 2750/2004

K. Magesh .... Ist Respondent in WP 2762/2004

J.A. Mohandoss .... Ist Respondent in WP 3003/2004

Benjamin Joseph .... Ist Respondent in WP 3004/2004

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N. Baskaran	....	Ist Respondent in WP 3766/2004
V. Kannan	....	Ist Respondent in WP 3767/2004
M. Nagarajan	....	Ist Respondent in WP 3810/2004
D. Mohanraj	....	Ist Respondent in WP 4163/2004
T. Chandra Prabha	....	Ist Respondent in WP 4164/2004

1. M. Abdul Rakheeb
2. C. Rajkumar
3. R. Vijaya Bhaskar
4. K. Natarajan
5. V. Kavitha
6. V. Ramesh
7. E. Sudhahar
8. V.P. Kumarasamy
9. V. Ponnambalam
10. M. Ramesh
11. P. Dhanasekaran
12. R. Rajeshwari
13. S. Rajalakshmi
14 M. Elumalai,
15. M. Rajan
16. **M. Thavamanimuthu**
17. J. Suresh
18. V. Leemarosalene
19. M. Valli
20. P. Manivasagam
21 J. Victoria Leyon
22. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai - 600104. .... Respondent in WP 4172/2004

P. Mariappan	....	Ist Respondent in WP 4940/2004
G. Muthukutti D/o S. Gangaimuthu	....	Ist Respondent in WP 4986/2004

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1. P. Balaraman
2. P. Murugan .... Respondents 1 & 2 in WP 5132/2004

P. Chellapandian .... Ist Respondent in WP 6369/2004

1. R.Chandramohan
2. P. Selvam
3. R. Pradeep Kumar
4. D. Richard Pedrick
5. T. Senthil Kumar
6. C.M. Anand
7. R. Balaji
8. R. Raghupathi
9. T, Thinesh Kumar
10. R. Sivasakthi Vinayaga Kumaran
11. P. Rajkumar
12. P. Manokaran
13. Ganasigamani
14. P. Balashanmugam
15. D. Sankar Ganesh
16. J. Saravanan. ..... Respondents 1 to 16 in WP.No. 6424/04

C. Kothainayagi ..... 2nd Respondent in WP.No. 11367/04

M. Francis Solaman Raj ..... 2nd Respondent in WP.No. 21433/2004

P. Muthammal ..... 2nd Respondent in WP.No. 22944/2004

T. Saravanan ..... Ist Respondent in WP 19967/2005.

W.P.No.38990 of 2002 has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records in O.A.No.1131 of 2001 on the file of the Central Administrative Tribunal, Madras and quash the order dated 28.3.2002.

Petition presented to this Court under Article 226 of the Constitution of India to issue Writs of Certiorari calling for the records in the order dated (I) 28/3/02 in O.A.Nos 1131/01, 862/01, 1149/01, 1137/01, 1138/01, 1237/01, and 1006/01 in WP.Nos. 38990/02, 2832 to 2835/03 9996/2003 and 10059/03 respectively.

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(II) 29/11/2002 in O.A.No. 536/02 and 537/02 (in WP.No. 30188 and 30345 of 2003 respectively.

(III) 10/2/2003 in O.A.No. 755/2002 in WP.No. 34623/2006

(IV) dated 3/10/2002 in O.A.No. 452/02, 451/02, 454/02, 453/02, 455/02, 456/02, 391/02, 457/02, 364/02, 396/02, 866/02, 553/02, 397/02, 390/02, and 469/02 in WP.Nos 2567/04, 2711/04, 2750/04, 2762/04, 3003/04, 3004/04, 3766/04, 3767/04, 3810/04, 4163/04, 4164/04, 4172/04, 4940/04, 4986/04, and 5132/04 respectively.

(V) dated 26/8/03 in O.A.No 1159/02 in WP.No. 6369/04

(IV) dated 25/9/03 in O.A.No 105/2003 in WP.No 6424/04

(VII) dated 05/01/04 in O.A.No 751/03 in WP.No 11367/04

(VIII) dated 22/3/04 in O.A.No 675/03 in WP.No. 21433/04

(IX) dated 24/12/2004 in O.A.No. 681/2003 in WP.No. 22944/2004 and
(X) dated 9/9/2004 in O.A.No. 162/2004 in WP.No. 19967/05

on the file of the Central Administrative Tribunal Madras and quash the said Order in all the petitions.

For petitioners in all the W.Ps. : Mr.V.T.Gopalan, Addl.Solilcitor General for M/s.S.Yashwanth, M.Devadoss, M.Dhamodharan, A.Rajendran, G.Nanmaran, K.L.Nandakumar, Sudharshan Sundar, Sunita Kumari, P.Chandrasekaran & K.Kannan, all Central Govt.Standing Counsel

For R.3 & R7 in WP.10059/2003, For R2, R3, R5, R8, R9, R11 to R42 in WP.9996/03 : Mr.Vijay Narayanan, S.C. for M/s.R.Parthiban

For R.1 in W.P.2567/2004, For R.1 in WP.3004/2004 For R.1 to R.4, R.7 to 21 in WP.4172/2004, Mr.Vijay Narayanan, S.C. for M/s.Karthikmukundan

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For R.1 in
WP.3003/2004,

For R.1 in
2762/2004,
For R.3 to R6,
R8 to 10 & 15 in
WP.6424/2004 :

For R.1 in
W.P.34623/2003 : Ms.R.Vaigai

For R.1 in
W.P.30188/2003,
For R.2 in
WP.11367/2004 : Mr.P.Rajendran

For R.1 in
WP.4163/2004,
For R.1 in
WP.3810/2004,
For R.1 in
WP.4940/2004
For R.2 in
WP.38990/2002,
For R.1 in
WP.4986/2004,
For R.2 in
WP.22944/2004,
For R.2 in
WP.2832 to
2835/2003 : Mr.R.Malaichamy

For R.1 in
WP.2711/2004,
WP.3766/2004,
R.1 in
W.P.3767/2004,
for R.1 in
W.P.4164/2004
For R.1 in
W.P.6369/2004
For R1, R.2,
R.7, R11 &
R.13 to R.16 in
WP.6424/2004,
For R.2 in
WP.21433/2004,

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for R1 to R6 in
R1 in 30345/03
R4, 6, 7 & 10 in W.P.9946/03
WP.4172/2004 : No appearance
R1 in W.P.2750/04 : No appearance
R1 & 2 in W.P.5132/04 - No appearance
For R.1 & R.2 in
WP.4986/2004 : Mr.V.Vijayshankar

For R.1 in
W.P.19967/2005 : Mr.A.Arokiadoss

For R.2 to R.22 in
W.P.2832/2003 : Mr.M.Radhakrishnan

COMMON ORDER

DHARMARAO ELIPE, J.

Since all the matters are inextricably connected with each other, they are heard together and disposed of by this common order.

2. The applicants before the Tribunal, who are the respondents herein, are all the dependents of Group-C and Group-D Staff of the Postal Department, who died in harness or retired voluntarily on medical grounds and they all have been approved for appointment on compassionate grounds in Group-C and Group-D posts. They all are working in various leave vacancies and short term vacancies. Since number of vacancies are lying vacant, their services are being utililzed for leave vacancies and thus they are serving without any break in service. The applicants were awaiting appointment in regular posts and were also imparted clerical training by the Department itself. After the judgment of the Apex Court in UMESH KUMAR NAGPAL vs. STATE OF HARYANA [(1994) 4 SCC 138], fixing the number of vacancies to be filled up by compassionate ground appointment as 5%, the Chief Post Master General, Tamil Nadu circle, issued a letter on 28.5.2001, seeking willingness in writing for consideration for appointment on compassionate grounds by other Ministries/Department from the candidates approved for compassionate appointment, who could not be given employment in the petitioner Department since they can also be absorbed in other Government Departments. Accordingly, all the applicants have submitted their willingness giving a choice of departments in which they prefer to be appointed on regular basis.

3. While things stood thus, the Ministry of Communications, Union of India, by the orders dated 25.7.2001 and 4.1.2002, impugned

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before the Tribunal, has taken a decision that any maintenance of the waiting list of approved candidates for compassionate appointment should be discontinued immediately and since the waiting list has been disposed, this may cause hardship to the approved candidates and in consideration of these aspects, a decision was taken to consider such wait listed candidates for vacancies in the post of Extra Departmental Staff. Based on the said letter, the Chief Post Master General, Tamil Nadu Circle, has issued a letter on 6.8.2001 to various Post Masters seeking a list of vacancies in the Extra Departmental Staff. Aggrieved, the applicants have filed a batch of Original Applications before the Tribunal praying to set aside the letter dated 25.7.2001 of the Ministry of Communications, Union of India and to direct the Department to appoint the applicants as Postal Assistants within a time limit.

4. The writ petitioners/Department filed a common counter before the Tribunal stating that the compassionate appointment cases are considered by the Circle Selection Committee, constituted in accordance with instructions of Directorate's Letter No.24-269/87-SPB 1 dated 24.9.1989 on merits; that as per the scheme of compassionate appointment circulated by the Department of Personnel & Training OM No.14014/6/94-Estt (D) dated 9.10.1998, it has been clearly mentioned at para 7(f) that if sufficient vacancies are not available in any particular office to accommodate the persons in the waiting list for compassionate appointment, it is open to the administrative Ministry/Department/Office to take up the matter with other Ministries/Departments/Offices of the Government of India to provide at an early date appointment on compassionate grounds to those in the waiting list; the Supreme Court has ruled in the cases of HIMACHAL ROAD TRANSPORT CORPORATION vs. DINESH KUMAR [JT 1996(5) SC 319] and HINDUSTAN AERONAUTICS LIMITED vs. SMT.A.RADHIKA THIRUMALAI [JT 1996 (9) SC 197] that appointment on compassionate grounds can be made only if a vacancy is available for that purpose.

5. It is further submitted that by OM.No.14014/23/99-Estt(d) dated 3.12.1999, it was further clarified by Department of Personnel and Training that the Committee for considering a request for appointment on compassionate ground should also take into account the position regarding availability of vacancy for such appointment for a really deserving case and only if vacancy meant for appointment on compassionate grounds are available within a year, that too within the ceiling of 5% mentioned, such cases should be approved; that the quota for compassionate appointment was reduced to 5% as per the decision of the Government of India communicated in Department of Posts letter No.24-170/94-SPB I dated 11.12.1995 with the result number of candidates selected for compassionate appointment are kept in the waiting list; that the proposal made by the Department of Posts to the Department of Personnel and Training to relax the 5% limit in order to accommodate the approved

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candidates kept in the waiting list was also turned down by the Department of Personnel and Training citing the Supreme Court judgment in U.K.Nagpal's case, cited supra, vide OM NO.42012/4/2000-Estt (d) dated 24.11.2000; that the Department of Posts had to discontinue the maintenance of the waiting list of approved candidates for compassionate appointment on the basis of Ministry of Personnel D.O.P.&T OM No.42012/4/2000-Estt (D) dated 24.11.2000 communicated in DG Posts letter No.24-1/99-SPB-I, dated 8.2.2001.

6. It is further submitted that as on date, all the approved candidates already in the waiting list were asked to express their willingness for consideration for appointment by other Ministries, however, it was subsequently found by the Nodal Ministry that the chances for absorption in the Ministries are remote and that there are also not enough vacancies; that keeping this in view, it was felt that an opportunity can be given to such wait-listed candidates who are waiting for some time to be considered for vacant posts of Grameen Dak Sevaks, if they are willing and eligible for the post and hence the Director General (Posts) instructed the Postal circles to offer Grameen Dak Sevaks vacancies to dependents of regular employees (Grade C and Grade D) who are already approved for appointment on compassionate grounds and whose names are kept in the waiting list for want of regular departmental vacancies under compassionate appointment quota as on 8.2.2001; that there is no obligation on the part of the approved candidates kept in the waiting list to accept the offer of appointment as Grameen Dak Sevaks and therefore, there is no arbitrariness in the Scheme of offering Grameen Dak Sevak post to the candidates as their willingness have been called for and they have not been forced to work as Gameen Dak Sevaks; that the averment that there are approximately 1,500 vacancies in the posts of Postal Assistants cadre is not correct and there are only 505 vacancies in the Postal Assistant cadre for 2001 out of which 50% is to be filled up under Direct Recruitment; as appointments have already been made every year upto 1999 in the 5% quota of the compassionate appointments, and the candidates considered over and above the prescribed quota were kept in waiting list anticipating chances of more vacancies and when the chances are remote, it was decided to offer them Grameen Dak Sevak posts taking into consideration the hardship faced by them.

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7. Since the Tribunal, has quashed the impugned orders dated 25.7.2001 and 4.1.2002 and directed the Department to consider the case of the applicants for regularisation against the regular vacancies in the grade of Postal Assistants/Postman/Grade 'C' or Grade 'D' posts as per the normal rules and orders governing compassionate ground appointments, the Department has come forward to file these writ petitions and obtained orders of interim stay.

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8. In the meanwhile, there was a proposal to grant one time relaxation to accommodate all the persons included in the waiting list . Before a decision could be taken on this proposal at the Headquarters, the Chief Post Master General, Tamil Nadu Circle had issued a notification to fill up 146 vacancies by direct recruitment and some of the applicants have filed O.A.No.693 of 2004 for a direction to forbear the writ petitioners/Department from making any appointment by way of direct recruitment and that O.A. was disposed of directing the department to take a decision on the proposal pending with the Ministry to grant one time relaxation. Pursuant to the said order, the Department has rejected the proposal and initiated action to fill up further 277 vacancies and the same was challenged by filing an application before the Tribunal. It is also stated that the persons who had applied much later to some of the applicants have been considered for such appointment, while some of the applicants are waiting for appointment in violation of the instructions issued in the letter dated 29.9.1989. The Tribunal, directed the Department to consider the case of seniors, to be appointed, if their juniors are appointed, based on the date of the application. Aggrieved, some writ petitions have also been filed which are also the subject matter in this batch of writ petitions.

9. The main core of the argument of the learned Additional Solicitor General appearing for the writ petitioners in all these writ petitions is that there are well laid down rules regarding compassionate appointment which stipulate that compassionate appointment will be made to enable the family of the deceased employee to tide over the financial crisis caused due to the death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood and such an appointment shall be made only on regular basis and that too if regular vacancy meant for that is available upto the maximum of 5% of the vacancies and such an appointment is an exception to general rule that appointment to public office should be made on the basis of competitive merits and once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no need to make appointment on compassionate ground at the cost of the interests of several others ignoring the mandate of Art.14 of the Constitution the Tribunal and the applicant cannot have a choice to choose a post under the compassionate ground appointments, without considering the good intention of the writ petitioners to offer Grameen Dak Sevaks to the applicants, even though the waitlist has been cancelled, has wrongly allowed the application, which needs upset by this Court.

10. On the contrary, the learned counsel appearing for the respondents/applicants before the Tribunal would submit that the Tribunal has considered all the facts and circumstances of the case encircling the whole issue and has correctly arrived at the

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conclusion to allow the applications filed by the applicants and therefore, all these writ petitions filed by the State are liable to be dismissed and would pray to dismiss all the writ petitions.

11. In support of his contentions, the learned Additional Solicitor General of India would cite the following decisions:

1. HINDUSTAN AERONAUTICS LTD. vs. A.RADHIKA THIRUMALAI [(1996) 6 SCC 394];
2. STATE OF J&K AND OTHERS vs. SAJAD AHMED MIR [(2006) 5 SCC 766] and
3. UNION BANK OF INDIA AND OTHERS vs. M.T.LATHEESH [(2006) 7 SCC 350].

12. There is no quarrel with regard to the propositions laid down therein by the Apex Court. But, in all these matters, the applicants have crossed the stage, which is the subject matter in all the above cited judgments in the sense that all the applicants were selected and approved for a posting on compassionate ground by a duly constituted Selection Committee as per the procedure laid down and they were also provided with necessary training by the Department at its expenses in their training institutes and employed them against leave vacancies and most of the applicants are in employment continuously. Thus, the applicants in these cases are not seeking compassionate appointment so as to apply the norms prescribed by the Apex Court in the above cited judgments, but all these applicants are seeking regularization of their appointments pursuant to their selection by the duly constituted Selection Committee and still they continue in their services and therefore, it cannot be said that these applicants are still in waiting list. Therefore, these cases cannot, in no way, be compared with the above cited cases and therefore, the ratio laid down in the above cases by the learned Additional Solicitor General does not come to the rescue of the case of the Department/petitioners.

13. Admittedly, the Post of Grameena Dak Sevak is not a civil post. As could be seen from Endt.No.B5/1-1/Rlgs, dated 18.7.2002 issued by the Senior Superintendent of Post Offices, Madurai Division, Madurai, Grameena Dak Seveaks cannot be treated as Central Government Employees. Since all the applicants were already offered appointments and while circulating their candidature for appointment against leave vacancies, the Department had indicated that their services would be regularised against future vacancies, they were under legitimate expectation that their services would be regularised in future course of action since they were already held to be suitable and qualified for such posts by the duly constituted Selection Committee. Therefore, as has been pleaded on the part of the applicants, they would have definitely given up all their attempts to pursue other options available for securing employment and by this time, most of the applicants might have even been over-aged to pursue any further post. Further, having allowed the

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applicants to work for a number of years with the fond hope of getting their posts regularized, now the Department offers them a non-civil post like Grameena Dak Sevak lest to vacate the post now they are occupying, which cannot at all be appreciated. As has been rightly observed by the Tribunal, the entire approach and the action of the Department to offer the post of Grameena Dak Sevak to the applicants is without any basis since the same is not at all covered by the compassionate appointment.

14. As has already been stated supra, all the applicants have been selected by a duly constituted Selection Committee and after after affording them the necessary training, they were listed for regularization and their services were also utilized against leave/short term vacancies. Therefore, it cannot be said that the applicants are in waiting list for compassionate ground appointment, which stage they have already crossed.

15. Pursuant to our direction to file a statement showing as to how many approved candidates for the post of postman etc. are waiting for appointment and how many were absorbed in regular vacancies between the period 1989 and 2001 and also to furnish the details regarding the recruitment conducted between 1989 and 2001 and how many regular vacancies have been filled up during the said recruitment, the writ petitioners have filed a statement stating that of the 622 candidates approved for compassionate appointment in Tamil Nadu Circle, 89 candidates have been appointed as Grameena Dak Sevaks and the remaining 533 candidate who have been offered Grameena Dak Sevaks posts have not come forward to accept the same and have chosen to seek legal remedy for compassionate appointment before the Court and since there are no vacancies under 5% quota for compassionate appointment, waiting list has been abolished by the Government and the wait listed candidates are eligible for Grameena Dak Sevak posts according to their willingness and eligibility as on date; that apart from them, 600 fresh applications from the year 2000 to 2005 have been received from the Units/Regions of Tamil Nadu Circle seeking compassionate appointment and these fresh applications have been processed and kept ready for submission to the Circle Relaxation Committee, but Circle Relaxation Committee could not be convened due to the matter being subjudice before the Court.

16. For the said note submitted by the Department, a strong and forcible reply note has been submitted by the respondents/applicants stating that the Department has omitted to indicate the number of direct recruitment vacancies sought to be filled up for the year 2006 in Postal Assistant/Sorting Assistant category and the number of direct recruitment vacancies arising year wise is not total number of direct recruitment vacancies but denotes only 1/3rd of the same, since there is a ban on direct recruitment from the year 2000.

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Since 5% quota has to be calculated on the basis of the total direct recruitment vacancies arising for that year and not on the reduced number of vacancies after applying the ban, the number of direct recruitment vacancies arising year wise as shown by the Department should be multiplied by three to arrive at the total number of direct recruitment vacancies for that year.

17. For the sake of convenience and better appreciation, the details furnished by the petitioners and the respondents are extracted in tabular columns below post-wise

(a) Postal Assistants/Sorting Assistants:

Details as furnished by the Department					Details furnished by the respondents	
Year	No.of vacancies under Direct Recruitment (Regular vacancies)	No.of vacancies under 5% quota	No.of persons appointed under compassionate ground in 12% quota upto 1994 and 5% quota from 1995	No.of candidates waiting for compassio-nate appoint-ment	No.of vacancies under direct recruit-ment (Regular vacancies) before applying ban	No.of vacancies for compassionate appointments 5% of regular vacancies
2000-01	160	8	--	--	480	24
2002	160	8	--	--	480	24
2003	120	6	--	--	360	18
2004	60	3	--	--	180	9
2005	320	16	--	--	960	48
2006	235	12	--	--	705	35
TOTAL	1055	53	--	--	3165	158

(b) Postman/Mail Guard

Details as furnished by the Department	Details furnished by the respondents

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Year	No.of vacancies under Direct Recruitment (Regular vacancies)	No.of vacancies under 5% quota	No.of persons appointed under compassionate ground in 12% quota upto 1994 and 5% quota from 1995	No.of candidates waiting for compassio-nate appoint-ment	No.of vacancies under direct recruit-ment (Regular vacancies) before applying ban	No.of vacancies for compassionate appointments 5% of regular vacancies
2000-01	--	--	--	--	--	--
2002	40	2	--	--	120	6
2003	60	3	--	--	180	9
2004	40	2	--	--	120	6
2005	120	6	--	--	360	18
TOTAL	260	13	--	--	780	39

(c) Group D/Mailman:

Details as furnished by the Department					Details furnished by the respondents	
Year	No.of vacancies under Direct Recruitment (Regular vacancies)	No.of vacancies under 5% quota	No.of persons appointed under compassionate ground in 12% quota upto 1994 and 5% quota from 1995	No.of candidates waiting for compassio-nate appoint-ment	No.of vacancies under direct recruit-ment (Regular vacancies) before applying ban	No.of vacancies for compassionate appointments 5% of regular vacancies
2000-01	80	4	--	--	240	12
2002	40	2	--	--	120	6
2003	40	2	--	--	120	6
2004	20	1	--	--	60	3
2005	160	8	--	--	480	24

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Year	No.of vacancies under Direct Recruitment (Regular vacancies)	No.of vacancies under 5% quota	No.of persons appointed under compassionate ground in 12% quota upto 1994 and 5% quota from 1995	No.of candidates waiting for compassio-nate appoint-ment	No.of vacancies under direct recruit-ment (Regular vacancies) before applying ban	No.of vacancies for compassionate appointments 5% of regular vacancies
TOTAL	340	17	--	--	1020	51

18. Thus, from the note submitted by the Department and the reply note submitted by the respondents/applicants we are able to understand that there are sufficient number of vacancies in the Department to absorb the applicants into the services of the Department.

19. The Tribunal, has considered all the facts and circumstances of the case in their proper perspective, applying the correct proposition of law on the subject and has arrived at a correct conclusion to direct the Department to consider the applicants for regularisation against regular vacancies in which we are unable to find any illegality or perversity in approach calling for our interference under Article 226 of the Constitution. Therefore, all these writ petitions fail and they are liable to be dismissed.

In the result, all the writ petitions are dismissed confirming the orders passed by the Tribunal. The petitioners are directed to regularise the services of the applicants before the Tribunal against regular vacancies in the grade of Postal Assistants/Postman/Grade-D posts as per the normal rules and orders governing compassionate ground appointments within three months from the date of receipt of a copy of this order.

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No costs. Consequently, all the connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Rao

To

1. The Chief Post Master (General)
   to the Union of India,
   Tamil Nadu Circle,
   Chennai-2.

2. The Senior Superintendent of Post Officer,
   Chennai city South Division,
   Chennai.

3. The Director General (Post)
   to the union of India,
   Dah Bhavan,
   Sansad Marg, New Delhi-1.

4. The Secretary to the Government of India,
   Department of personnel and Training,
   M/o.Personnal,Public and Pensions,
   New Delhi-110 001.

5. The Chief Post Master General,
   Tamil Nadu Circle,
   Chennai-2.

6. The Chief Post Master
   Chennai GPO
   Chennai

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7. The Senior Superintendent
of Post Officers,
Pondicherry Division,
Pondicherry.

8. The Superintendent of Post officers,
Chengalpattu Division,
Chengalpattu.

9. The Director General of Police
Ministry of Communication
Department of Post,
New Delhi-1

10. The Superintendent of Post officers,
to the union of India,
Salem West Division,
Salem, Salem District.

11. The Senior Superintendent RMS
Chennai South Division,
Chennai-600 008.

12. The Senior Superintendent of Post officers,
Nilgiri Division,
Udhagamandalam 643 001.

13. The Senior Superintendent of Post officers,
Tuticorin Division,
Tuticorin 628 008.

14. The Senior Superintendent of RMS
RMS 'MA' Division,
Madurai 625 001.

15. The secretary to the Ministry of
Communications to the union of India,
Department of Posts,
Deh Bhavan, Sansad Marg
New Delhi 110 001.

16. The Senior Superintendent of Post officers
Virudhunagar Division,
Virudhunagar 626 001.

17. the Senior Superintendent of Post officers
to the union of India,
Vellore Division, Vellore,
Vellore District.

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18. The Senior Superintendent of Post officers
Tambaram Division,
Tambaram, Chennai.

19. The Superintendent of Post officers
to the union of India,
Tiruvannamalai Division,
Tiruvannamalai.

20. The Senior Superintendent of post officers
Madras City North Division,
Department of Post,
Commander in Chief Road,
Egmore, Chennai-600 008.

21. The Registrar,
Central Administrative Tribunal
City Civil Court Buildings,
Chennai-104.

+8 ccs to Mr.R.Malaichamy, Advocate Sr.No.36161.

+1 cc to Mr.Karthik, Advocate Sr.No.36661.

+1 cc to Mr.R.Parthiban, Advocate Sr.No.36660.

Dated: 20.6.2007

ORDER

W.P.Nos.38990 of 2002, 2832 to 2835 of 2003, 9996, 10059, 30188, 30345, 34623 of 2003, 2567 of 2004, 2711 of 2004, 2750 of 2004, 2762 of 2004, 3003 of 2004, 3004 of 2004, 3766 of 2004, 3767 etc of batch of 2003 and 2934/04, 3142/04 etc.

Dismissing these Petitions to issue writs of certiorari as stated within.

SMV (CO)
kk,km,nm,sg, sr, dcp 11/7

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